

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1180 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BAI ZAMARKA WD/O. JERAM MOTI BHAT

Versus

HARILAL RANCHHODLAL NAYAK

Appearance:

MR RG CHHARA for Petitioner

MR K V Shelat for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 02/05/2000

ORAL JUDGEMENT

The petitioner being original plaintiff in Regular Civil Suit No.753/95 in the Court of learned Civil Judge (JD), Ahmedabad (Rural), has filed this Revision Application under section 115 of the Code of Civil Procedure, 1908, challenging the order dated

18.9.1996 of the learned Second Joint Civil Judge (JD), Ahmedabad (Rural) below application Exh.5 under which the said application was partly allowed and partly disallowed and the said order came to be confirmed in Civil Misc. Appeal No.193/96. The petitioner contended before the trial court that he had purchased a land with house and he was in possession thereof on the strength of the said document dated 5.7.1971. The petitioner, therefore, prayed for interim relief preventing the respondent from interfering with the possession of the petitioner with respect to enjoyment of the said property in possession of the petitioner. After hearing the parties, the learned trial Judge came to the conclusion that the petitioner had shown prima facie that she was in possession of the house and, therefore, injunction was granted pending hearing and disposal of the suit. However, so far as the remaining land is concerned, the petitioner failed to prove her possession. Therefore, that part of the relief was turned down by the trial court. The petitioner preferred Civil Misc.Application No.193/96 which came to be dismissed by the learned 4th Extra Asstt.Judge, Ahmedabad (Rural), by judgment and order dated 26.6.1997. Therefore, the two courts have recorded concurrent finding of facts that the petitioner was prima facie, not in possession of the remaining land.

2. I have heard the learned Advocate for the petitioner and have perused the papers. It appears that the aforesaid finding of fact is based on appreciation of evidence of document dated 5.7.1971 produced at Exh.37 before the trial court. That document shows possession with respect to the house, but there is no mention about the remaining land. It appears that some part of the writing is illegible and it is not possible to ascertain as to what was written in that part of the document. The petitioner has not filed any affidavit in support of her case regarding possession in respect of the remaining land. The petitioner has submitted that the petitioner has been paying panchayat tax for the land as well as for the house. The petitioner has submitted copies of receipts to show that the tax paid in respect of the house but receipts for the tax paid in respect of the land have not been produced. No explanation has been offered for the omission to produce the said document. In the aforesaid view of the matter, it cannot be said that the two courts below have committed jurisdictional error in deciding the aforesaid issue against the petitioner. In that case, there is no merit in the present Civil Revision Application and consequently, this Revision Application deserves to be dismissed.

Learned Advocate for the petitioner submits that the petitioner is an old lady. She is shown to be 65 years old in 1997 when the suit was filed. Considering the aforesaid circumstance, the trial court may expedite the hearing and disposal of the suit.

3. As stated above, this Revision Application is ordered to be dismissed with cost of the respondent. Rule discharged. Interim relief granted earlier stands vacated.

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msp.